IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 222 OF 1994

THE STATE OF MAHARASHTRA)
At the instance of Shri R.S.)
Rajabhooj, Food Inspector) .. APPELLANT

Versus

1. SHRI NANJIBHAI DEVRAJBHAI)
Chauhan, Vendor.)

2. SMT. KHATIJABAI NOORBHAI)
WOONWALA,Owner of M/s.Bharat)
Ice Candy, 150 Takiyaward,)
Kurla (W), Mumbai 400 070.) .. RESPONDENTS

Mrs. M.M. Deshmukh, APP for State

Mr. S. V. Marwadi with Mr. Vikramsinh V. Yadav for respondents

CORAM:-SMT. RANJANA DESAI, J.

DATED:-5/10/2006

ORAL JUDGMENT:

. In this appeal judgment and order dated 19/7/93 rendered by the Addl. Chief Metropolitan Magistrate, 46th Court, Mazgaon, in Case No. 284/S of 1989 is under challenge. By the impugned order the learned Magistrate has acquitted the respondent accused of the charges under Section 7(i) of

Prevention of Food Adulteration Act, 1954 ("the said Act" for short) read with Rule 5A.07.04 of the Prevention of Food Adulteration Rules, 1955 ("the said Rules" for short) punishable under Section 16 of the said Act. It would be advantageous to give gist of the facts of the case.

2. PW 2 Ravindra Devendra Vankudre was working as the Food Inspector at the relevant time. On 25/9/84 at about 11-30 a.m. he along with his colleague Food Inspector Mr. Lohar and panch witness Avinash Narvekar visited Bharat Ice Candy, 150-Takia Ward, Kurla (W). At that time he found accused 1 Nanjibhai Chauhan manufacturing ice candy for the purpose of sale in the said premises. He disclosed his identity as Food Inspector and his intention behind his visit to the said premises. He took inspection of the premises. He found ice candy stored in the refrigerator for the purpose of sale. He demanded 12 pieces of ice candy totally weighing 600 grams and purchased them for the purpose of analysis. He paid Rs.1.20 as cost of the same. He obtained cash memo from the accused. Cash memo is at Exh.-P.15. It bears the signature of accused 1 and the panch witness. He informed the accused that the ice candy was purchased for

the purpose of analysis. This intimation was given in Form NO. VI. Then he gave notice under Section 14-A of the said Act, calling for information about the manufacturer or supplier of the ice candy. The same is at Exh.-P-17. Thereafter he obtained common receipt of payment of cost and intimation along with notice under Section 14A of the said Act. Exh.-P-18 is the said common receipt.

3. According to PW 2 Ravindra, he then removed sticks from the ice candies and divided 12 ice candies into 3 equal parts. Then he put each part containing four candies separately at three different places, in dry, clean and empty bottles. He put cork on each bottle. Then he put sample labels with all details about the food articles. The labels were signed by the accused and panch witnesses. He also signed on them. Each bottle was then wrapped in thick brown paper with folded ends and pasted with gum. After completing all the formalities of pasting slips etc. he put his specimen seal impression with the help of sealing wax on the bottles. He obtained the signature of the accused on the LHA slip on the wrapper. A panchnama was prepared. It is at Exh.-P-19.

4. On 26/9/84 he prepared seven copies of memorandum in Form No. VII. He sent two sealed packets separately with covering letters to the public analyst. On the same day he sent two sealed packets along with two separate covering letters to LHA by hand delivery.

5. On 28/10/84 he received public analyst's report. It is at Exh.-6. The public analyst had opined that after analysis of ice candy it was found that the standard of ice candy is not as per the prescribed standard given in the said Act and the said Rules. Thereafter he called for necessary information about the shop of the accused person. In the month of February, 1985 he handed over the charge to his colleague PW 3 Food Inspector Raosaheb Shankarrao Rajbhoj.

6. PW 3 Raosaheb Shankarrao Rajbhoj collected letter from the Medical Officer L-Ward, dated 16/4/85 by which the medical officer had informed that the licence of the said shop is in the name of accused 2 Khatija Noorbhai Poonawala but the conductor of the shop is accused 1. PW 3 Rajbhoj then took the necessary steps. He prepared a complaint and filed it before the learned

Magistrate on 3/9/85.

7. The charge was framed on 30/6/93. The accused were charged for having sold on 25/9/84 at 11-30 a.m. 600 grams of ice candy which was adulterated within the meaning of Section 7(i) of the said Act read with Rule 5A.07.04 of the said Rules punishable under Section 16 of the said Act.

8. In support of its case, the prosecution examined PW 1 Gajanan Pandurang Patkar who was at the relevant time working as Head Clerk in Public Health Department and who was authorised to receive samples and relevant documents from the Food Inspector. The prosecution also examined Food Inspector PW 2 Ravindra Devendra Vankudre and PW 3 Food Inspector Raosaheb Rajbhoj. The prosecution also examined PW 4 Ratnakar Sitaram Chatim, the public analyst. PW 5 Vijay Raghunath Kirtane, the Joint Commissioner was also examined, Pancha PW 6 Avinash Tukaram Narvekar turned hostile. The accused denied the charge.

9. After perusing the evidence on record, the learned Magistrate acquitted the accused of the charges levelled against them. The learned

Magistrate was of the view that PW 1 Gajanan Patkar was not authorised to receive the samples and relevant documents from the Food Inspector. According to the learned Magistrate the evidence of Food Inspector PW 2 Ravindra Vankudre is not satisfactory and it is not corroborated by the evidence of the panch witness. The learned Magistrate was also of the opinion that PW 4 public analyst Ratnakar Chatim could not satisfactorily give evidence showing that ice candies were adulterated and sanction given by PW 5 Vijay Kirtane to prosecute the accused is also not according to law because he was not appointed as Joint Commissioner FDA.

10. In view of these findings the learned Magistrate acquitted the accused. Being aggrieved by this judgment and order of acquittal, the State of Maharashtra has preferred this appeal.

11. I have heard at considerable length the learned APP Mrs. Deshmukh. She has submitted that the impugned judgment and order is perverse and must be set aside. She submitted that the learned Magistrate has given undue importance to minor irregularities in the procedure. According to the

learned APP the evidence of PW 2 Ravindra Vankudkre inspires confidence. The report of the public analyst which is at Exh.-6 clearly states that the ice candies were adulterated. The learned APP contended that prosecution has established that the required procedure was meticulously followed by the Food Inspector. Samples were properly seized and sealed and in such circumstances the learned Magistrate ought not to have acquitted the accused.

12. The learned counsel for the respondents on the other hand submitted that no interference is necessary with the impugned judgment and order. He submitted that the view taken by the learned Magistrate is a reasonably possible view, which ought not to be disturbed by this court in an appeal against acquittal.

13. I have considered the submissions advanced by both sides in depth. In my opinion, evidence of PW 4 Chatim the public analyst is of great importance in this case. He has admitted in his cross-examination that in this case he has applied Rule 5A.07.04. This Rule pertains to ice lollies or edible ices, it reads thus:

> "5A.07.04 - **"Ice lollies or edible ices**" means the frozen ice produce (which may contain sugar, syrup, fruit, fruit juices, cocoa, citric acid, permitted flavours and colours. It may also contain permitted stabilizer and/or emulsifiers not exceeding 0.5 per cent, by weight). It shall not contain an artificial sweetener.

A bare reading of this rule is sufficient to indicate that no percentage of sugar content is prescribed for ice lollies. In fact PW 4 Chatim has admitted that in cases covered by Rule 5A.07.04 sugar is not required. He has further gone on to say that due to oversight he has wrongly applied the said Rule instead of Rule just below that. He has further admitted that sample which was drawn was not ice lollies but ice candies. The Rule which pertains to ice candy is 5A.07.04.01 which reads thus:

> "5A.07.04.01. - **Ice candy** means the frozen ice produce which may contain

> fruit, fruit juices, cocoa, nuts, citric acid, permitted flavours and colours. It may also contain permitted stabilizers and/or emulsifiers not exceeding 0.5 per cent. The total sugar expressed as sucrose shall not be less than 10 per cent, by weight. It shall not contain any artificial sweetener."

14. For ice candy it is prescribed that total sugar expressed as sucrose shall not be less than 10 per cent by weight. Therefore, the prosecution should have charged the accused for violation of Rule 5A.07.04.01 which pertains to ice candy and not for violation of Rule 5A.07.04 which pertains to ice lollies. It appears that Rule 5A.07.04.01 is substituted by GSR 57(e) dated 11th February, 1982 with effect from 11th February, 1982. Therefore, the entire case of the prosecution has proceeded on a wrong basis. The mistake committed by the prosecution is admitted by the public analyst PW 4 Ratnakar Chatim.

15. In the circumstances, in my opinion, the learned Magistrate has committed no error in acquitting the accused. The mistake committed by

the prosecution is so grave that on that ground itself the accused must be acquitted. It is therefore, not necessary for me to examine the other alleged defects in the prosecution case which have also persuaded the learned Magistrate to acquit the respondent.

16. In my opinion, the view taken by the learned Magistrate is a reasonably possible view, which does not deserve to be disturbed in an appeal against acquittal. Hence the appeal is dismissed.

(SMT. RANJANA DESAI,J.)